

of the work force. An individual who was assigned to represent management in dealing with the union would not have been covered simply because the arrangements he or she made with the union might subsequently influence the personnel practices followed for the nonunion employees as well.

13. Coverage depended on the regular or assigned duties and responsibilities of the position. A person that held a position did not go in and out of coverage as she performed first contract and then noncontract work if, throughout the period, one of the duties of the position was to perform contract-related work as the need or occasion arose. For example, the photocopy machine technician who was assigned responsibility to repair machines leased to the Government and to private firms was covered throughout the contract term, including the period before he or she first repaired the Government's machine. Discrimination against the employee was not permissible simply because the discrimination was effected on a day when the technician was servicing a private firm. Likewise, workers who were on an assembly line whose products were shipped at times to the Government and at times to private customers were covered, as were employees of the airline carrier whose duties included at times helping to transport Federal employees pursuant to a contract.

14. On the other hand, a person whose duties were permanently changed may have gained or lost coverage as a result. For example, an engineer who had been working on developing weapons under a contract with the military, and who accordingly was covered, may have been transferred to work on development of civilian aircraft for private customers. If the new position did not include any contract-related duties, the individual lost protection under the act at the time of the transfer.

15. It is the position's regular or assigned duties that were controlling. If a portion, however small, of a position's regular duties was necessary to or facilitated carrying out a Government contract, the position was covered. On the other hand, the isolated and unanticipated performance, outside the position's regular duties, of a contract-related task will not result in a finding of coverage. For example, suppose another employee of the photocopy machine company, whose regular duties were in no way contract-related, was unexpectedly needed to substitute for the technician who repaired the machine leased to the Government. Assuming substitution in such situations was not one of the employee's regular or foreseeable duties, his or her isolated performance of the task on a particular occasion would not result in a finding of coverage. In some cases, there will be a formal written position description that will serve as evidence of the position's actual duties and responsibilities. In other cases,

there may not be a written position description, or the position description may be inaccurate or incomplete. In all cases, however, it should be possible to identify the position's actual duties, and to make a determination of coverage on that basis.

16. The fact that a position is deemed not to have been engaged in carrying out a Government contract does not affect the individual's rights under the Americans with Disabilities Act of 1990.

## **PART 60-742—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS**

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60-742.1 Purpose and application.

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60-742.7 Review of this part.

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AUTHORITY: 42 U.S.C. 12117(b).

SOURCE: 57 FR 2962, 2965, Jan. 24, 1992, unless otherwise noted.

### **§ 60-742.1 Purpose and application.**

The purpose of this part is to implement procedures for processing and resolving complaints/charges of employment discrimination filed against employers holding government contracts or subcontracts, where the complaints/charges fall within the jurisdiction of both section 503 of the Rehabilitation Act of 1973 (hereinafter "Section 503") and the Americans with Disabilities Act of 1990 (hereinafter "ADA"). The promulgation of this part is required pursuant to section 107(b) of the ADA. Nothing in this part should be deemed to affect the Department of Labor's (hereinafter "DOL") Office of Federal Contract Compliance Programs' (hereinafter "OFCCP") conduct of compliance reviews of government contractors and subcontractors under section 503. Nothing in this part is intended to create rights in any person.